Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 226 of 2003 (S/S)

Pushpender Kumar …… Petitioner

Versus

State of Uttaranchal & others …… Respondents

Mr. Alok Singh, learned senior counsel assisted by
Mr. Munish Bhardwaj, learned counsel for the petitioner.
None for the respondents.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has prayed for mandamus directing the respondents to give appointment to the petitioner on the compassionate ground on the post of Constable (Ministerial). And a writ in the nature of certiorari has also been sought for quashing the impugned orders dated 10.07.2003, 06.05.2003 and 08.05.2003 passed by respondent Nos. 2,3 and 4 respectively.

2. Brief facts of the case as narrated in the writ petition are that petitioner's father Shri Kunwar Pal Singh was Assistant Sub Inspector (M), posted at 40 Battalion P.A.C. Haridwar. The said official died on 26.09.2001 leaving behind his wife and three unemployed sons including the petitioner. After death of father of the petitioner were was no one to look after the family and the petitioner in the circumstances applied for job on the post of Constable (M) in October 2001. The physical measurement of the petitioner were as under:

Height- 163.6cms.; Chest- 78 cms. And 82.5 cms. And weight- 52 Kgs.

A copy of application along with the above physical measurements recorded by Chief Medical Superintendent,

District Hospital Haridwar is annexed as Annexure- 1 to the writ petition. The Commandant of 40 Battalion P.A.C. Haridwar, respondent No. 4, recommended the case of the petitioner for his appointment to the post of Constable (M) on the compassionate ground vide letter No. 58/2001 dated 02.11.2001 to the Deputy Inspector General of Police (Personnel), Police Headquarters, Uttaranchal at Dehradun (respondent No. 3). In reply to which by a letter dated 23.11.2001 from the office of respondent No. 3, petitioner was asked to submit the affidavit in the matter and respondent No. 4 was also asked to send a report regarding correctness of the facts alleged after verification from the L.I.U. Haridwar, regarding the petitioner. The same was complied with and forwarded through respondent No. 4 vide his letter dated 23.01.2002 to the Police Headquarters, Dehradun. In the writ petition it is further alleged that as per the policy / guidelines issued by the Director General of Police, Uttaranchal, if a candidate is not found fit for being appointed as Constable (Civil Police) on compassionate ground, his case may be considered for appointment as Constable (M). However, the petitioner was informed vide letter dated 08.05.2003 that he cannot be given appointment on the post of Constable (M) due to the short comings in his physical standards and it is further informed by said letter that the petitioner's appointment may be considered against the post of a Class- IV employee. Aggrieved by which this writ petition has been filed. The petitioner made a representation against said letter which was forwarded by respondent No. 4 to the respondent Nos. 2 and 3. During pendency of his writ petition in compliance of the interim order of the Court, said representation appears to have been rejected on the same ground as mentioned above.

3) A counter affidavit has been filed on behalf of respondent Nos. 1 to 4 in which the fact that the petitioner's father was Assistant Sub Inspector (M) in the respondents' department, who

died in harness, has not been denied. In the counter affidavit it has been stated that as per the policy / guidelines as amended vide order dated 07.10.2002 a dependent of the deceased employee cannot be given job on the post of Constable (M) and in case he is not eligible for appointment for the post of Constable (Civil Police) his case can be considered for Class- IV post. In the counter affidavit it has not been denied that the petitioner sought appointment on the post of Constable (M) by means of an application dated 22.10.2001 and after recording the measurements of height and chest etc. His case was recommended to the Police Headquarters. But it has been stated that the physical measurements required are different then what were found, as such after considering his case he was communicated in May 2003 that he may be considered for the post in Class- IV but not for post of Constable (M).

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit and supplementary affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether the petitioner is wrongly denied appointment to the post of Constable (M) and has he got the right to be appointed on said post on compassionate ground as claimed by him?

6) Admittedly, petitioner's father Shri Kunwar Pal Singh was Assistant Sub Inspector (M) with 40 Battalion P.A.C. Haridwar, who died on 26.09.2001. It is also not disputed that the petitioner is a son of said deceased official who applied for job for the post of Constable (M). Copy of application and physical fitness certificate (Annexure- 1 to the writ petition) show that the petitioner possessed following physical measurements:

Height- 163.6 cms.; Chest- 78 cms. and 82.5 cms. and weight- 52 Kgs.

The petitioner was aged 20 years. It is also admitted that respondent No. 4 recommended the case of the petitioner for his appointment to the post of Constable (M). The entire dispute relates whether the petitioner was wrongly denied by the respondents, the appointment on said post by offering him a Class-IV post. The impugned order dated 08.05.2003 is Annexure- 6 to the writ petition and the impugned order dated 10.07.2003 by which the representation dated 27.05.2003 of the petitioner was rejected in compliance of the interim order passed by this Court is annexed at page 6 of the supplementary affidavit sworn by Shri D.S. Negi, Company Commandant, 40 Battalion P.A.C. Haridwar. In both the above impugned orders the ground for denying the appointment to the petitioner on the post of Constable (M) is mentioned to be that the does not fulfill the necessary physical standards required for the said post. However, from the perusal of the impugned orders it is not clear what standards are required and by what difference these are short. During the arguments no Standing Counsel assisted the Court to explain the same. The policy / guidelines which has been relied by the respondents are annexed as Annexure C.A. 1 to the counter affidavit. The relevant para of the said policy / guidelines reads as under:

> 3–कान्स0 (एम) पद के सम्बन्ध में :
>
> यह निर्णय लिया गया कि सामान्यतः कान्स0 (एम) के पद पर मृतक आश्रितों का समायोजन नहीं किया जायेगा। आश्रितों को केवल कान्स ना0पु0 के पद पर सेवायाजित किया जायेगा। यदि कोई मृतक आश्रित कान्स0 की अहतायें पूर्ण न करते हुए हो तो उन्हें कान्स0 (एम) पद पर सेवायोजित करने के लिए विचार किया जा सकता है।

It only says that <u>ordinarily</u> appointment to Constable (M) shall not be given to the dependent of the deceased employees but if they failed to fulfill the requirement for Constable (Civil Police) they can be considered for the post of Constable (M).

Not only this para 6 of said policy / guidelines reads as under:

6- मृतक आश्रितों के सेवायोजन से सम्बन्धित उपरोक्त सभी वर्णित प्राविधानों में विषेष परिस्थितियों में प्रकरण विषेष पर पुलिस महानिदेषक, उत्तरांचल द्वारा षिथिलता प्रदान की जायेगी।

7) As such stand taken by respondents is against para 3 of their Policy. In view of the fact that the petitioner is a graduate and also considering the fact that while denying appointment to the post of Constable (M) on compassionate ground the respondents have failed to state in the counter affidavit what exactly standard was lacking, particularly in view of the fact that the respondent Nos. 3 and 4 themselves recommending candidature of the petitioner for the post of Constable (M), it cannot be said that the appointment of the petitioner was rightly denied. However, this Court cannot in the circumstances of the case without knowing the short comings in the physical standards issue a mandamus to appoint the petitioner to the post of Constable (M) but for the reasons as discussed above the impugned orders are definitely liable to be quashed and the petitioner's representation for his appointment to the post of Constable (M) on compassionate ground needs reconsideration. Therefore, the writ petition is allowed. The impugned orders dated 06.05.2003, 08.05.2003 and 10.07.2003 are quashed to the extent of denial of appointment to the post of Constable (M) and respondents are directed to reconsider the case of the petitioner for appointment to the post of Constable (M) on compassionate ground, afresh within a period of three months from today. Meanwhile, will be at liberty to accept Class- IV post as offered to him at this stage, by the respondents. No order as to costs.

(P.C. Pant, J.)

Dt.: 25th September, 2004

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